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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 470

UNITED MINE WORKERS OF AMERICA, UNITED MINE WORKERS OF AMERICA, DISTRICT 23; EARL SUVER, AGENT, UNITED MINE WORKERS OF AMERICA AND ITS DISTRICT 23; ARTHUR CHANEY, AGENT, UNITED MINE WORKERS OF AMERICA AND ITS DISTRICT 23,

PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 507-510) is reported at 195 F. 2d 961. The findings of fact,

conclusions of law, and order of the National Labor Relations Board (R. 128-142) are reported at 92 NLRB 916.[1]

JURISDICTION

The judgment of the court below was entered on April 28, 1952 (R. 507). A petition for rehearing was denied on September 5, 1952 (R. 535). The petition for a writ of certiorari was filed on November 28, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 and under Section 10(e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether substantial evidence in the record considered as a whole supports the Board's findings, sustained by the court below, that petitioners by force, and threats of force, punitive action, and economic reprisals, restrained and coerced the employees of six non-union mines located within the geographical limits of the organizing jurisdiction of petitioner District 23 in order to compel them to join the United Mine Workers of America, thereby violating Section 8 (b) (1) (A) of the Act.

2. Whether, on the basis of the Board's findings, the Board properly ordered petitioners to cease and desist from restraining and coercing, in any manner, the employees of the six mines and any other employees engaged in mining operations within the geographical limits of the jurisdiction

[1] Reference to portions of the printed record submitted by petitioners in this Court are designated "R." Those references preceding the semicolon where one appears are to the Board's findings, and those following are to the supporting evidence.

of District 23, and properly ordered petitioners to transmit copies of the notice of compliance with the order, for posting, to each local of District 23.

3. Whether the trial examiner erred in permitting testimony to be adduced, solely as background material, relating to organizing activities by petitioning unions in 1946 and in refusing to permit petitioners to adduce testimony relating to the alleged opposition of the charging parties to the petitioning unions.

STATUTE INVOLVED

The pertinent provisons of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 151, *et seq.*) are set forth in the Appendix to the petition at pp. 27-29.

STATEMENT

Upon the filing of charges by the Homestead Coal Company, the Colonial Coal Company, the Badgett Mine Stripping Corporation, and the West Kentucky Coal Company, respectively, the Board, pursuant to its rules and regulations, consolidated the cases for the purposes of hearing and issued a consolidated complaint against petitioners (R. 45-49). Thereafter, petitioners filed an answer to the complaint (R. 52-53, 55-58). At the consolidated hearing the Poplar Ridge Coal Company, the Badgett Corporation, the Julia-Ree Corporation, and the Badgett Mine Stripping Company filed and were granted motions to intervene (R. 59-60; 145-146). Following the consolidated hearing, at which petitioners introduced no evidence, the Trial Ex-

aminer issued a single intermediate report (R. 61-113) and the Board a single decision and order (R. 128-142). The pertinent facts, as found by the Board, with which the court below agreed, may be summarized as follows:

A. The facts as found by the Board

On June 29 and 30, 1949, petitioners, United Mine Workers of America (hereinafter referred to as UMWA), and its District 23, through Earl Suver and Albert Chaney, paid organizers, attempted to organize 6 non-union mines [2] located in two counties in the western part of Kentucky and within the geographical limits of District 23's organizing district. These mines are owned or operated by the charging parties (R. 65-67; 497-501). The plan of campaign followed in basic outline at each of the mines in turn was as follows: Suver and Chaney approached the mine to be organized at the head of a mass of union members and followers numbering from 1,000 to 2,500 individuals who had been assembled from the union locals in five counties in Kentucky, and from Illinois and Indiana (R. 70-71; 208-209, 210, 325, 402-403, 410, 438). Under the direction and command of Suver and Chaney, the crowd proceeded to the mine property in a long line of busses, trucks, and private automobiles which extended along the road for a

[2] These were: The East and North Diamond mines operated by the West Kentucky Coal Co.; Homestead mine operated by the Homestead Coal Co.; Poplar Ridge mine operated by the Poplar Ridge Coal Co.; Colonial mine, operated by the Colonial Mining Co.; and Hecla mine operated by the Badgett Mine Stripping Corp.

mile or more (R. 70-71; 208-209, 210, 225-226, 325, 364, 402, 410, 434-435). When the crowd had reached its destination, Suver and Chaney, together with from 2 to 4 other individuals who served as a committee, sought the mine officials, informed them that they had come on a "peaceful mission" to organize the mine employees and requested that the mine be shut down and that the miners be called out of the mines so that they might "talk to them" (R. 71, 74, 80, 83, 85-86, 90-91, 93-94; 212-214, 226-227, 247-249, 272-273, 290-292, 296-297, 326, 356-357, 368, 408-409, 412-413, 434-435, 448).

While this request was being made, the crowd scattered over the mine property, rounded up the surface employees and herded them to an assembly place. (R. 75-77, 80, 83, 86-88, 90-91, 94; 298, 300, 302, 360, 368-369, 400, 415, 431-432, 437, see 489-490.) The mine superintendent at each mine demurred to the request that he shut down his operations, and Suver and Chaney promptly changed the request to a peremptory demand (R. 74, 80, 83, 86, 90, 94; 227, 291-292, 326-327, 331, 399, 448). The superintendent then consulted the sheriff and the head of the highway patrol. These law officers informed the superintendent that they did not have a force large enough to control the crowd and advised him to accede to the union demands in the interest of peace. Thereupon, the superintendent gave orders that the men be called out of the mine. (R. 75, 80, 83, 90, 94; 214, 227, 327, 336, 358-359, 375-376, 399, 409, 448, 461). At this point, Suver and Chaney took complete control of the situation in the mine

yard. The union crowd roamed over the mine yard, seizing the miners' lunches at one mine and breaking into the company's ice house at another (R. 80, 87, 91; 298, 300, 302, 360, 400, 415, 423, 431, 437, 479, 489).

When the miners appeared, members of the crowd ordered them with rough and insulting language, and in some cases forcibly, to a place of assembly designated by Suver and Chaney (R. 77, 80-81, 83-84, 86-87, 91, 95; 249, 307-308, 316, 327-328, 330, 360-361, 371-372, 376, 385-386, 410, 415, 451). When they had thus been herded into one place, and had been completely surrounded by the crowd, they were addressed by Suver and Chaney and at several of the mines also by other organizers. Suver and Chaney told them, with minor variations in detail and emphasis from mine to mine, that they were there to organize the miners into the UMWA and pointed out the advantages of the organization. They then informed the miners that they were going to close the mine down until the men joined the UMWA and the company signed a contract with the organization, and that they were prepared to see to it, with the use of violence if necessary, that the men did not work again until these conditions were met. They finally requested the miners to raise their hands to signify that they would not return to work before they joined the UMWA or the contract had been signed, and invited them to attend meetings at specified locations at which they could "sign up" in the union. (R. 78-79, 84, 89, 96; 249-250, 257-258, 265-266, 273-274, 286-287, 292-293, 299, 328, 343,

348, 373-374, 382-383, 386-387, 392-393, 400-401, 420, 426-427). The miners were then ordered to leave the property. At the Homestead mine, the third one visited, the miners refused to raise their hands when requested to do so. Their refusal was greeted by an angry roar from the crowd. Chaney threatened to pay them all another visit, and they were forced to leave the mine to the accompaniment of insults and catcalls. (R. 84-85; 345-346, 353-354, 425-427).

As the caravan proceeded from mine to mine, the demand of Suver and Chaney to the mine officials became more peremptory and the attitude of their followers toward the miners progressively more abusive and threatening. At the East Diamond Mine, the first one visited, the manner of Suver and Chaney was courteous and the attitude of the accompanying crowd comparatively quiet. However, when the mine superintendent suggested to Chaney that he and his followers were trespassing and should wait until the end of the shift and speak to the men off mine property, Chaney retorted "Well, Ray, it's the same damned old story . . . we have heard that a lot of times, we want to talk to your men. What are you going to do about it?" (R. 74; 213). When the sheriff asked Chaney whether the miners would be permitted to return to work after Chaney spoke to them, Chaney abruptly rejected the suggestion with the remark "What in hell do you think we're all out here for?" (R. 74; 214). When Chaney addressed the employees, he reminded them that he had gotten them out of

that mine once before, and that if they now tried to return before a contract was signed, he would return and "it would be bad" (R. 78; 274). At the Poplar Ridge mine two miners were assaulted and injured by members of the crowd. The miners were told by one of the speakers that he was from "bloody Williamson County" and that he "had some men who he did not bring with him on this trip," that these men "just couldn't be controlled," but that if he had to come back he was going to "bring them with him." (R. 88; 373, 382-383). At the Hecla mine, Suver warned the miners that the UMWA was stronger than they were and that if the miners returned to work without joining the union, the UMWA men would return and "let their conscience be their guide" (R. 96; 436, 453, 464, 471, 475, 486).

The attempts of Suver and Chaney to organize the six non-union mines herein involved was but a step in the wider attempt to organize all the non-union mines within the geographical limits of District 23. Suver and Chaney stated that the purpose of their visitations to these mines was "to organize the West Kentucky Coal Company and other companies, that the employees were not going to be permitted to operate until they signed up with the United Mine Workers;" that "the West Kentucky and other companies were running coal that was scab coal in competition with union mines," that "it would not be permitted any more," and that "the drive would be continued until they were all organized." Suver stated also that "they

were out to unionize all the nonunion mines in the territory". (R. 130; 183-184, 400-401, 417, 420).

B. The Board's conclusions and order

Upon the facts summarized above, the Board found that petitioners, the United Mine Workers, its District 23 and their agents, had, by force and threats of force, punitive action and economic reprisals, restrained and coerced the employees at the 6 mines herein involved in the exercise of their right, guaranteed by Section 7 of the Act, to refrain from engaging in concerted organizational activities, and that petitioners had thereby violated Section 8 (b) (1) (A) of the Act (R. 128-129, 99-104). The Board further found that petitioners' conduct was "the beginning of a planned program to apply the same techniques to all the nonunion mines within the organizing jurisdiction of District 23" (R. 130).

Accordingly, the Board ordered petitioners to cease and desist from, in any manner, restraining and coercing the employees at the 6 mines herein involved, or any other employees engaged in mining operations within the geographical limits of the jurisdiction of District 23, in the exercise of the rights guaranteed them by Section 7 of the Act, by exerting or threatening to exert force, or violence against them, or by taking or threatening to take punitive action or economic reprisals against any of said employees unless they join and become members of the United Mine Workers of America or by coercing and restraining said employees in the exercise of their right, guaranteed by Section

7 of the Act, to refrain from engaging in concerted activities (R. 131-132). Affirmatively, the Board ordered petitioners to post the usual notices of compliance with the order at their business offices, to send copies of the notices to the Board's regional director for posting at each of the mines herein involved, and to each of the locals of District 23 with instructions and orders to post such notices or to communicate the contents of the order to the local's membership (R. 132-133).

C. The decision of the court below

In a *per curiam* decision enforcing the Board's order in full, the court below found that "the findings of the Board are sustained by overwhelming evidence" (R. 509). The court stated (R. 509-510), "The mass trespass on company property, the rounding up of nonunion men from the mine premises and forced cessation of work, the physical compulsion which was used to prevent their leaving the premises or returning to work after the speeches were over, the constant abuse and threats of physical violence, were highly coercive. * * * The presence of so many hostile men on mine property and their encirclement of the relatively small groups of nonunion workers was coercion." The court also rejected petitioners' objections to the order insofar as it requires petitioners to cease and desist from restraining and coercing not only employees in the six mines involved here but also all other employees engaged in mining operations within the geographical limits of District 23's jurisdiction. The court stated that "in view of the

purpose of the invasion of these mines . . . which, as stated by Suver, was that the union group was out to unionize all the nonunion mines in the territory we think this order was a proper exercise of discretion on the part of the Board" (R. 510).

ARGUMENT

1. Questions 1 and 2 (Pet. 17-21, 21-24) were presented in the almost identical case of *United Mine Workers of America, District 31 et al.* v. *National Labor Relations Board,* October Term, 1952, No. 364, in which this Court denied certiorari. Certiorari should be denied here with respect to these questions for the same reasons as were urged by the Government in No. 364.

2. Petitioners assert (Pet. 25) that the court below erred in enforcing the Board's order because the trial examiner committed prejudicial error in permitting testimony to be adduced relating to organizing activities by petitioners in 1946 similar to the activities in 1949 that constitute the basis of the Board's order, and in refusing to permit petitioners to adduce testimony that the charging companies "had a background of opposition to organized labor and active opposition to the petitioning Unions."

The trial examiner permitted the introduction of the testimony relating to the 1946 organizing activities solely as background evidence which tended to explain the apprehensive attitude of the employees toward the petitioners' organizing activities (R. 71-72). The Board made no unfair labor practice findings with respect to the 1946 activities.

Consideration of such background material by the Board for the purpose of assessing the legality of activities charged to be violative of the Act is entirely proper. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261, 268-270; *National Labor Relations Board* v. *Newport News Shipbuilding and Dry Dock Company,* 308 U. S. 241, 244-248; *Federal Trade Commission* v. *Cement Institute,* 333 U. S. 683, 705; *National Labor Relations Board* v. *Clausen,* 188 F. 2d 439, 443 (C. A. 3); *Superior Engraving Co.* v. *National Labor Relations Board,* 183 F. 2d 783, 791 (C. A. 7), certiorari denied, 340 U. S. 930.

The trial examiner also properly excluded testimony relating to the alleged opposition of the charging parties to the petitioning unions. This testimony [3] was irrelevant to the issues herein, and there is no showing that its exclusion has in any way prejudiced petitioners. The examiner's ruling does not present an issue of importance warranting review by this Court.

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[3] Specifically, petitioners complain (Pet. 25) of the trial examiner's ruling sustaining an objection to the following question put to the personnel director of one of the charging parties (R. 200): "Were you instructed by the West Kentucky Coal Company or any of its officers to exert your efforts toward preventing or inducing the employees not to join the United Mine Workers of America?" The examiner sustained the objection on the ground that the testimony sought to be elicited was irrelevant to the issues in the proceeding before him (R. 200).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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